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June 24, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

By Messenger

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington D.C. 20554

Re: Ex Parte Filing - CC Docket No. 97-121

Dear Mr. Caton:

Brooks Fiber Properties, Inc., ("Brooks") submits this letter and two attached documents as an ex parte filing in the above-referenced docket. Specifically, Brooks submits two letters -- one, dated June 9, 1997 from Larry B. Cooper of Southwestern Bell Telephone Company (SWBT) to the undersigned and, second, a responding letter from Brooks to SWBT dated June 20, 1997. These letters address the issue of inter-company compensation for traffic originating and terminating within a local calling scope when such traffic terminates to an internet service provider (ISP). These documents are submitted as an ex parte filing because Brooks did not receive SWBT's letter until after the close of the comment cycle in this matter, and because SWBT's June 9 letter constituted SWBT's first assertion of its position on this matter to Brooks.

As a review of the exchange of letters discloses, SWBT purports to unilaterally declare that traffic which originates and terminates within a local calling area and terminates to an ISP is interstate or intrastate interexchange traffic and, based on that assertion, SWBT intends to neither request nor pay local compensation for termination of such traffic. In its response, Brooks states that the SWBT position is untenable and, if acted upon by SWBT will, in Brooks' view, constitute a breach of the Brooks-SWBT interconnection agreements. It should be noted that the local compensation agreements between Brooks and SWBT in the states of Oklahoma, Arkansas, Missouri and Kansas establish reciprocal compensation rates for local traffic, rather than mutual traffic exchange.

Brooks has immediately declared this matter to constitute a disputed issue under the dispute resolution provisions of its interconnection agreements with SWBT. This matter is brought to the attention of the Commission due to its relevance to the question of Southwestern Bell Corporation's compliance with the requirements of Section 271 of the Telecommunications Act of 1996.

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If you have any questions concerning this matter, I can be reached at (314) 579-4637.

Very truly yours,

A handwritten signature in black ink, reading "Edward J. Cadieux". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Edward J. Cadieux
Director, Regulatory Affairs - Central Region
Brooks Fiber Properties, Inc.

Larry B. Cooper
General Manager-
Competitive Provider
Account Team

Southwestern Bell Telephone
One Bell Plaza
Suite 0525
Dallas, Texas 75202
Phone 214 464-8145
Fax 214 464-1486



June 9, 1997

Mr. Edward Cadieux
Director, Regulatory Affairs - Central Region
Brooks Fiber Properties
425 Woods Mill Road South,
Suite 300
Town and Country, MO 63017

RE: Local Terminating Compensation for Delivery of Internet Service Provider Traffic

Dear Mr. Cadieux:

The purpose of this letter is to address local terminating compensation for the delivery of traffic destined for internet service providers (ISPs).

Originating access to an ISP is accomplished by the ISP's subscribers dialing a seven digit telephone number which local exchange carriers route through their switching networks to the ISP's premises. The ISP often uses special access circuits to transport this originating interexchange access traffic to a distant location.

The FCC has found, and the courts have agreed, that the jurisdiction of traffic is determined by the end-to-end nature of a call. In paragraph 28 of the FCC's *Order Designating Issues for Investigation* in CC Docket No. 88-180, released April 22, 1988, the FCC disagreed with an argument by Southwestern Bell that 800 credit card traffic terminated at the IXC's credit card switch for jurisdictional purposes. The FCC stated that the switching performed at a credit card switch was an intermediate step in a single end-to-end communication. It is the ultimate destination that must be used to jurisdictionalize a call. In the *NARUC vs. FCC* decision issued October 26, 1984, (746 F.2d 1492), the court found that even the use of facilities that are wholly within an exchange may be jurisdictionally interstate as a result of the traffic that uses them.

The FCC provided ISPs, insofar as they are also enhanced service providers, with an access charge exemption that permits ISPs to use local exchange services in lieu of access services to receive originating interstate calls (and to terminate interstate calls to the extent this functionality is required). The use of local exchange services by an ISP does not change, in any way, the jurisdiction of the originating interstate traffic transported over these services to the ISP's premises. In other words, this originating interstate access traffic does not become "local traffic" simply because the FCC permits an ISP to use business local exchange service as its exchange access service.

Mr. Edward Cadieux
June 9, 1997
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In paragraph 1034 of its *Local Competition Order* in CC Docket No. 96-98, released August 8, 1996, the FCC stated that the reciprocal compensation provisions of section 251(b)(5) would only apply to local traffic as defined by the state commission (paragraph 1035). Further, the FCC specifically ruled that reciprocal compensation did not apply to interstate or intrastate interexchange traffic. As such, Southwestern Bell/Pacific Bell will not request, nor will it pay, local terminating compensation for interstate or intrastate interexchange traffic. This includes calls passed to ISPs pursuant to local interconnection agreements since this traffic is jointly provided originating interexchange access. This decision satisfies the spirit and intent of the Telecommunications Act of 1996 and is consistent with the provisions of local interconnection agreements.

If you would like to discuss this matter further, I can be reached on 214-464-8145 or you may call your account manager, Sharon McGee, on 214-464-8147.

Sincerely,

A handwritten signature in black ink, appearing to read "David Cooper". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

cc: Sharon McGee



June 20, 1997

Larry B. Cooper
General Manager -
Competitive Provider Account Team
Southwestern Bell Telephone Company
One Bell Plaza, Suite 0525
Dallas, Texas 75202

Re: Local Terminating Compensation for Delivery of Internet Service Provider Traffic

Dear Mr. Cooper:

I am in receipt of your letter dated June 9, 1997 concerning the matter of local terminating compensation for delivery of traffic destined for internet service providers (ISPs). This letter responds on behalf of the Brooks Fiber Communications, Inc., operating companies ("Brooks") to the Southwestern Bell/PacBell (SWB) position as described therein.

Please be advised that Brooks unequivocally rejects the position stated by SWB – i.e., the assertions that traffic terminating to ISPs is interstate or intrastate interexchange traffic for compensation purposes, and that SWB will neither request nor pay local traffic compensation for termination of such traffic. Suffice it to say that none of the purported precedents cited in your letter are on-point, much less controlling, with respect to this issue. To the contrary, the long-standing and well-recognized practice and rule is that such traffic, when originated and terminated to an ISP located within the same local area is local traffic.

Indeed, Brooks finds SWB's position to be so completely devoid of merit such that it can properly be characterized as a bad faith after-the-fact attempt to unilaterally avoid the financial implications of the local compensation provisions voluntarily entered into by your Company in its bilateral negotiations with Brooks. In this regard we find SWB's statement of intent to be highly anti-competitive and extremely disturbing in terms of its implications for the on-going business relationship between our companies. If SWB acts in concert with the position stated in its June 9, 1997 letter, Brooks would consider such action to constitute a material breach by SWB of its interconnection agreements with Brooks.



Due to the importance of the issue and the nature of SWB's position, Brooks hereby declares this issue to be a dispute between the parties under the Dispute Resolution provisions of the Brooks-SWB Interconnection Agreements covering the States of Oklahoma, Arkansas, Missouri and Kansas. (Brooks will communicate separately on this issue with respect to the same issue with PacBell in California.) The undersigned is hereby identified as Brooks' representative for purposes of a dispute resolution meeting. Again, due to the importance and nature of the issue, an expedited meeting schedule and period for resolution is appropriate. I propose that SWB immediately designate its representative and that we meet at SWB's offices in St. Louis, Missouri on one of the following days: June 26, 27 or July 1 or 2.

Please call me at (314) 579-4637 to confirm the identification of SWB's representative for dispute resolution purposes, and to confirm your choice among the above-listed dates and the location of the meeting.

Very truly yours,

A handwritten signature in cursive script that reads "Edward J. Cadieux".

Edward J. Cadieux
Director, Regulatory Affairs - Central Region

cc: John C. Shapleigh, Brooks
Sharon McGee, SWB